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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID NAVARRO,

Defendant and Appellant.

D074187

(Super. Ct. No. SCD266270)

APPEAL from a judgment of the Superior Court of San Diego County, Runston G. Maino, Judge. Affirmed.

David Navarro, in pro. per.; and Patricia J. Ulibarri, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for the Plaintiff and Respondent.

David Navarro's appointed appellate counsel has filed a brief asking this court to independently review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Navarro accepted the opportunity to file his own brief, which we address below. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 2013, Navarro was arrested by FBI agents after European and Australian law enforcement officials discovered videos of Navarro on the internet sexually abusing two minors. Navarro lived in another state at the time. At the time of arrest, FBI agents executed a search warrant of Navarro's home and workplace locker, where they discovered a large amount of child pornography, including videos of Navarro engaging in sex acts with the minors, and videos of Navarro engaging in acts of public lewdness.

After his arrest, Navarro was charged in federal court with two counts of production of child pornography and sexual exploitation of children (18 U.S.C. § 2251(a) and (e)), one count of receipt and distribution of child pornography (18 U.S.C. § 2252(a)(2) and (b)(1)), and one count of possession of child pornography (18 U.S.C. § 2252 (a)(4)(B)). Navarro pleaded guilty to the charges and was sentenced to 23 years in federal prison. While in prison for the federal crimes, the San Diego County District Attorney filed charges against Navarro alleging 14 counts of sexual misconduct with one of the minors in the videos uncovered in the FBI investigation (six counts of sexual intercourse or sodomy with a child 10 years old or younger (Penal Code § 288.7(a)¹), four counts of oral copulation or sexual penetration with a child 10 years old or younger (§288.7(b)), and four counts of lewd acts on a child (§ 288(a))), and one count of public lewdness (§ 288(a)) related to a 2009 incident involving a different minor unknown to Navarro, triggering the one-strike law (§ 667.61).

¹ Subsequent statutory references are to the Penal Code.

Navarro pleaded not guilty to the charges and eventually waived his right to a jury trial. After a six-day trial, the court found Navarro guilty of 14 of the 15 charges against him. The prosecution's case included witness testimony of the FBI agents involved in Navarro's arrest and with expertise in locating the origins of digital child pornography, and the live testimony of Navarro's victims, including one who was 12 years old at the time of trial. The prosecution also introduced the transcript of a forensic interview conducted with that victim in which she described the sex acts performed on her by Navarro and the precise location of the acts that occurred in San Diego.

The prosecution also introduced into evidence the videos that formed the basis for the federal charges against Navarro and that exhibited violations of California's criminal laws. In addition, the prosecution introduced the testimony of the victim of the 2009 crime that took place inside a department store in San Diego and of the police officers involved in the investigation of that crime. In that incident, Navarro exposed his genitalia and touched the arm of a nine-year-old minor with his penis. The assault occurred in a children's aisle of the store when the child was briefly separated from the child's mother. The child immediately reported the incident, and Navarro was detained at the scene and subsequently arrested, but was not prosecuted at the time.

Navarro's defense theory was that none of the abuse occurred in San Diego. At trial, Navarro asserted all of the charged incidents occurred in another state after he moved there in November 2011. To support this theory, Navarro introduced the testimony of social workers and a forensic interviewer who were involved in an investigation after the department store incident, and two additional reports of potential

sexual abuse related in 2009 and 2010. The forensic interviewer involved in the store incident testified that Navarro's case was closed in 2010. The two social workers involved in the other incidents testified they had investigated the reports of suspected abuse and had closed their investigations without finding any evidence of abuse. To rebut this testimony, the prosecution introduced an expert witness who opined on the widespread phenomenon of child victims of sexual abuse remaining silent.

After finding Navarro guilty of 14 of the charged offenses, the court found Navarro statutorily ineligible for probation, and sentenced him to an indeterminate term in prison of 215 years to life, consisting of 25 years to life on five counts, 15 years to life on five counts, and stayed sentences on the four remaining counts under section 654. The court ordered Navarro to pay \$10,000 in parole restitution in addition to a criminal assessment and court security fee. The court also maintained jurisdiction for 120 days for purposes of victim restitution.

DISCUSSION

As indicated, appointed appellate counsel filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 summarizing the proceedings below and indicating she could not find any reasonably arguable issues for reversal or modification of the judgment on appeal. In his supplemental brief, Navarro raises two issues.

Navarro first contends the court abused its discretion by refusing to dismiss the count that relates to his sexual assault of a child in a store under section 1385. Navarro bases this claim on his assertion that there was insufficient evidence to support the court's

guilty verdict. "A trial court's decision to not dismiss or strike a prior serious and/or violent felony conviction allegation under section 1385 is reviewed for abuse of discretion." (*People v. Philpot* (2004) 122 Cal.App.4th 893, 904.) " '[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.' " (*Id.* at pp. 904-905.) Contrary to Navarro's assertion, sufficient evidence supported the court's guilty verdict and its decision not to strike the conviction under section 1385 was well within its discretion.

Next, Navarro argues the court erred by denying the defense's motion to sever the same count and try it separately. Because the charge was properly joined for trial under section 954, Navarro had the burden " 'to clearly establish that there [was] a substantial danger of prejudice requiring that the charges be separately tried.' " (*People v. Armstrong* (2016) 1 Cal.5th 432, 455.) We review the court's decision to deny a motion to sever for abuse of discretion and conclude the decision did not fall outside of the court's wide discretion. (*Id.* at pp. 455-456.)

Our independent review of the record as mandated by *Wende* and *Anders*, has disclosed no other reasonably arguable appellate issues for reversal. Competent counsel represented Navarro on this appeal.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

IRION, J.